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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/549,451	04/14/2000	Charles Bluth	M-8231 US	8923

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[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3736

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.	09/549,451	Applicant(s)	BLUTH ET AL.
Examiner	Michael Astorino	Art Unit	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 07 January 2003.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-37 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)                  4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                  5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                  6) Other: \_\_\_\_\_

## DETAILED ACTION

The examiner acknowledges the amendment filed January 7, 2003.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-8, 10-13, and 24-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Lloyd et al. US Patent 6,080,106 A.

First, in regards to the term “logic” in the specification and use of the term in the claims, the only recitation of “logic” in the specification is on page 6, lines 13-17. The applicant states “The processor **106** executes a logic (not shown), typically a computer program that includes health services and information system software **120**, that is stored as software, firmware, control logic or other executable forms as are known by one of ordinary skill in the art.” This statement provides the examiner with little to no information regarding the specific use of logic. Although enabling subject matter for the claims provided, little patentable weight is given to the term “logic” outside of the broad definition provided by Microsoft Press Computer Dictionary, “In programming the assertions, assumptions, and operations that define what a given program does.”

In regards to claims 1, and 5-6, Lloyd et al. disclose a health services and information system comprising (see abstract): a controller (20), local storage coupled to the controller (column 7, lines 26-29), a health test interface including physiological monitor as either a blood pressure monitor (columns 3-4, lines 61-1) or scale (10), a keyboard (30), and display (40) coupled to the controller, the controller including: logic for controlling the health test interface to perform measurements on a user to acquire health test measurement data (column 7, lines 29-32); logic for processing the health test measurement data to generate a health test result for a user (column 7, lines 29-32); logic for controlling storage of the health care test result in the local storage in an storage element allocated for the user (column 7, lines 29-39); a communications interface (60) coupled to the controller, the controller being capable of communicating with a remote server with a remote storage via the communications interface (60), the controller (20) further including: logic for controlling storage of the health care test result in the remote storage in a storage element allocated for the user (inherent).

In regards to claims 2, Lloyd et al. disclose a display (40) which includes logic for controlling presentation of health care results (see abstract) including a presentation of a health care result history (column 7, lines 36-38). In regards to claim 3 and limitations of claim 7, Lloyd et al., disclose the appraisal of health care risk is the deviation of measurement from the target weight. In regards to claim 4, Lloyd et al. disclose the sensor can be a blood pressure measuring device (columns 3-4, lines 61-1). In regards to further limitations of claim 7, Lloyd et al. disclose an interactive session between the user and the provider for storage and retrieval of data at the local and remote locations (column 7, lines 39-65). In regards to claim 8, Lloyd et al. disclose the use of a pass-code and/or a magnetic ID card (column 6, lines 22-47) for providers

and users/patients. In regards to claim 10, Lloyd et al. disclose automatically transferring data to the remote storage (column 7, lines 38-39). In regards to claim 11, Lloyd et al. discloses a data archive (figure 1) for use with an interactive session (columns 7-8, lines 1-43). In regards to claim 12, Lloyd et al. interactive session is in itself a service and therefore is presented to the patient, and a change in medication (column, lines 59-65) would be the electronic commerce during an interactive session. Lastly, in regards to claim 13, Lloyd et al. discloses determining whether a medication selected by the user is compatible with medications that the user is currently taking (column 7, lines 59-65).

In regards to claim 24 and 28-29, Lloyd et al. discloses a method of operating a health services and information system including a controller (20) and coupled to the controller a local storage (column 7, lines 26-29), a scale (10), and a communications interface (30, 40), the method comprising: executing instructions at the controller including controlling the diagnostic equipment to perform a health test measurement on a user (column 7, lines 29-32), processing the health test measurement to produce a health care test result for the user (column 7, lines 29-39); controlling storage of the health test result in the local storage in a storage element allocated for the user (column 7 lines 32-39; and communicating with a remote server with a remote storage via the communications interface (column 7, lines 32-39); and controlling storage of the health care test result in the remote storage in a storage element allocated for the user (inherent).

In regards to claims 25, Lloyd et al. disclose a display (40) which includes logic for controlling presentation of health care results (see abstract) including a presentation of a health care result history (column 7, lines 36-38). In regards to claim 26 and limitations of claim 30, Lloyd et al., disclose the appraisal of health care risk is the deviation of measurement from the

target weight. In regards to claim 27, Lloyd et al. disclose the sensor can be a blood pressure measuring device (columns 3-4, lines 61-1). In regards to further limitations of claim 30, Lloyd et al. disclose an interactive session between the user and the provider for storage and retrieval of data at the local and remote locations (column 7, lines 39-65). In regards to claim 31, Lloyd et al. disclose the use of a pass-code and/or a magnetic ID card (column 6, lines 22-47) for providers and users/patients. In regards to claim 32, Lloyd et al. disclose automatically transferring data to the remote storage (column 7, lines 38-39). In regards to claim 33, Lloyd et al. discloses a data archive (figure 1) for use with an interactive session (columns 7-8, lines 1-43). In regards to claim 34, Lloyd et al. interactive session is in itself a service and therefore is presented to the patient, and a change in medication (column, lines 59-65) would be the electronic commerce during an interactive session. Lastly, in regards to claim 35, Lloyd et al. discloses determining whether a medication selected by the user is compatible with medications that the user is currently taking (column 7, lines 59-65).

In regards to claim 36, Lloyd et al. disclose a method of operating a health services and information system (see abstract) including a controller (20) and coupled to the controller a local storage, a health test interface (10, 30, 40), and a communications interface (60), the method comprising: acquiring a health test measurement from the health test interface(10); executing instructions including processing the health test measurement to produce a health care test result for a user (column 7, lines 25-32); controlling storage of the health care test result in the local storage in a storage element allocated for the user; and communicating with a remote server with a remote storage via the communications interface (columns 6-7, lines 61-10); controlling storage of the health care test result in the remote storage in a storage element allocated for the

user (inherent); and executing instructions at the controller further including: controlling the measurement interface to perform a weight measurement giving a weight measurement result for a user (column 7, lines 25-39), and controlling the storage of the measurement result in the local storage in a storage element allocated for the user (column 7, lines 38-39) and communicatively coupling the remote server to the controller via the communications interface (60; column 7, lines 39-65).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. in view of Cosentino et al. US Patent 6,290,646 B1.

In regards to claim 9, Lloyd et al. discloses a computer (20), the local storage, the communications interface (60), and health test interface (10, 30, 40), however does not disclose a “kiosk”. However a kiosk is a freestanding computer or terminal that provides information to the public. It is the examiner’s position that public access to the apparatus of Lloyd et al. would be maintained by placing the device in a public location. Also Lloyd et al. fails to a kiosk that houses the components of the system, however Cosentino et al. a reference in an analogous art discloses a similar apparatus with a housing that encompasses all the components of the system. It would have been obvious to one of ordinary skill in the art to substitute the embodiment of

Cosentino et al. with the embodiment design of Lloyd et al. as an alternative means for designing the scale.

5. Claims 14-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent 6,080,106 A.

First, it is the examiner's position that a "kiosk" is a freestanding computer or terminal that provides information to the public. It is the examiner's position that public access to the apparatus of Lloyd et al. would be maintained by placing the device in a public location. In regards to the system or apparatus claims there is no difference between Lloyd et al. (figure 1) and a kiosk.

In regards to claim 14 and 18, Lloyd et al. discloses a health services and information system comprising: a server and a server storage (columns 5-6, lines 61-10) coupled to the server, the server being capable of storing health care test results and measurements for a plurality of uses in storage elements respectively allocated to the plurality of users; one or more health care kiosks, the health care kiosks including a controller (20) and diagnostic equipment (10) coupled to the controller (20), the controller having a capability to appraise user health care risk on the basis of diagnostic test data acquired at the health care kiosk by the diagnostic equipment (column 7, lines 29-39), user health care information entered by the user at the health care kiosk (column 7, lines 39-50), user information stored at the user storage (column 39, lines 38-39); and a communications interface (60) coupled to the server, the server being capable of communicating with the one or more health care kiosks via the communications interface (60) to transfer health care test results and measurements from the health care kiosks to the server and to

transfer health care information from network information sources to the health care kiosks (columns 7-8, lines 50-10).

In regards to claims 15, Lloyd et al. disclose a display (40) which includes logic for controlling presentation of health care results (see abstract) including a presentation of a health care result history (column 7, lines 36-38). In regards to claim 16 and limitations of claim 19, Lloyd et al., disclose the appraisal of health care risk is the deviation of measurement from the target weight. In regards to claim 17, Lloyd et al. disclose the sensor can be a blood pressure measuring device (columns 3-4, lines 61-1). Lloyd et al. further disclose an interactive session between the user and the provider for storage and retrieval of data at the local and remote locations (column 7, lines 39-65). In regards to claim 20, Lloyd et al. disclose the use of a pass-code and/or a magnetic ID card (column 6, lines 22-47) for providers and users/patients. In regards to claim 10, Lloyd et al. disclose automatically transferring data to the remote storage (column 7, lines 38-39). In regards to claim 21, Lloyd et al. discloses a data archive (figure 1) for use with an interactive session (columns 7-8, lines 1-43). In regards to claim 22, Lloyd et al. interactive session is in itself a service and therefore is presented to the patient, and a change incurring a charge in medication (column, lines 59-65) would be equivalent the electronic commerce during an interactive session. Lastly, in regards to claim 23, Lloyd et al. discloses determining whether a medication selected by the user is compatible with medications that the user is currently taking (column 7, lines 59-65).

6. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cosentino et al. US Patent 6,454,705 B1 in view of Lloyd et al. US Patent 6,080,106 A.

In regards to claim 37, Cosentino et al. disclose a method of operating a health services and information system including a controller and coupled to the controller a local storage, a blood pressure measurement equipment, and a communications interface for communicating with a remote server, the method comprising: using the blood pressure measurement equipment to acquire a first measurement of blood pressure for a user; storing the first measurement of blood pressure for the user at a remote server; using the blood pressure measurement to acquire subsequent measurements of blood pressure for the user; storing the subsequent measurements of blood pressure for the user at the remote server; generating a user blood pressure history by retrieving the first and subsequent measurements of blood pressure for the user from the remote server; displaying the user blood pressure history to the user each entry of the user blood pressure history comprising a date and a blood pressure measurement associated with the date, but does not blood pressure as the measurement. However, Lloyd et al. a reference in an analogous art discloses that a weight scale and blood pressure monitor/sensor can be substituted for each other to remotely monitor wellness parameters. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute a blood pressure monitor for a weight scale, since it was known in the art, as taught by Lloyd et al., to remotely monitor wellness parameters of a subject using blood pressure or a weight scale.

*Response to Arguments*

7. Applicant's arguments with respect to claims 1-37 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Michael Astorino** whose telephone number is **703-306-9067**. The examiner can normally be reached on Monday-Thursday, 10:00AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0758 for regular communications and 703-308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5648.

MA

March 10, 2003



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